UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Charles Wolff,

Plaintiff,

v. | CIVIL ACTION NO. 06-321-PB

New Hampshire Department of Corrections, et al.,

Defendants.

OBJECTION TO MOTION(S) FOR CONTEMPT

NOW COME the Defendants, by and through their counsel, the Office of the Attorney General, and object to the Defendants three recently filed motions for contempt, stating as follows:

1. Plaintiff is an incarcerated inmate who has brought this action against the Department of Corrections and a number of its employees and officials on the ground that his civil rights have been violated in contravention of 42 U.S.C. §1983. In particular, Plaintiff claims that he is not being provided with a nutritionally-adequate kosher diet.

2. Plaintiff filed a motion for preliminary injunction on July 9, 2007. An evidentiary hearing was held before Magistrate Muirhead on August 2, 2007. The Court issued a provisional Report and Recommendation on August 3, 2007. The parties are currently awaiting a ruling from the Court.

3. In the meantime, the Plaintiff has filed three separate motions to have Mr. Rick Stacy, a DOC staff member who works in the kitchen, held in contempt. *See* Docket No. 53; Docket No. 54 and Docket No. 55. The gravamen of all three motions is the same – that the

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kitchen staff continues to serve Mr. Wolff hard-boiled eggs for breakfast. Wolff has claimed repeatedly that hard-boiled eggs make him sick, and that he cannot tolerate them. The Department of Corrections disputes this claim, especially given the fact that Mr. Wolff has admitted that he has no problem with scrambled eggs or fried eggs.

4. The Defendants object to all three of Plaintiff's motions, which are entirely baseless and frivolous, on the same grounds. First, in order to prevail on a motion for contempt, Mr. Wolff would need to establish by clear and convincing evidence that Mr.Stacy violated a Court order. *See*, Goya Foods, Inc. v. Wallack Mgmt. Co., 290 F.3d 63, 77 (1st Cir. 2002); AccuSoft Corp.

v. Palo, 237 F.3d 31, 47 (1st Cir. 2001). In this case, there has been no court order issued to Mr. Stacy or any other member of the Department of Corrections staff regarding what food Mr. Wolff should be served. The Court has never ruled that it is unconstitutional for Mr. Wolff to be served eggs. Such an order is highly unlikely, given the factual circumstances of this case. Furthermore, even if the Court had issued an order, it would need to be exceedingly clear and direct, since "any ambiguities or uncertainties in such a court order must be read in a light favorable to the person charged with contempt." Project B.A.S.I.C. v. Kemp, 947 F.2d 11, 16 (1st Cir. 1991); see also Gilday v. Dubois, 124 F.3d 277, 286 (1st Cir. 1997).

5. Mr. Wolff has been seen repeatedly by the medical staff at the Department of Corrections, and has been sent to an outside dietician for a consult. There has been no confirmation by medical professionals that Mr. Wolff has an allergy to eggs, or any other objective medical condition that would preclude him from eating hard-boiled eggs.

6. Admittedly, Mr. Wolff has high cholesterol which is currently under control with medication. Therefore, he should probably avoid eating egg yolks. However, Mr. Wolff can simply set aside the yolks and eat the white portion of the eggs if he desires.

7. No separate memorandum of law has been filed with this objection, as the relevant facts and legal authority are cited herein.

WHEREFORE the Defendants respectfully request that the Honorable Court:

A. Deny Plaintiff's Motion for Contempt;

B. Grant any additional relief as is just and proper.

Respectfully submitted,

NEW HAMPSHIRE DEPARTMENT OF
CORRECTIONS, ET AL.

By and through their attorneys,

KELLY A. AYOTTE
ATTORNEY GENERAL

\s\ Andrew B. Livernois__________
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Certification of Service

September 28, 2007

I hereby certify that a copy of the foregoing was mailed this day, postage prepaid, to Charles Wolff, *pro se*, P.O. Box 14, Concord, NH 03302.

/s/ Andrew B. Livernois
Andrew B. Livernois